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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,329	11/09/2001	Michael Baudino	11738.00050	4048
27581	7590	03/14/2007		
MEDTRONIC, INC. 710 MEDTRONIC PARK MINNEAPOLIS, MN 55432-9924			EXAMINER WITCZAK, CATHERINE	
			ART UNIT	PAPER NUMBER
			3767	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/14/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/053,329

Applicant(s)

BAUDINO ET AL.

Examiner

Catherine N. Witczak

Art Unit

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-80, 82-86, 89-107 and 110-141 is/are pending in the application.
- 4a) Of the above claim(s) 1-79 and 110-141 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 80, 82-86, and 89-109 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

Art Unit: 3767

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/12/2007 has been entered.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –


(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 80, 82, 83, 85, 86, 89, 103, 106 and 107 are rejected under 35 U.S.C. 102(b) as being anticipated by Hofling (US 5,354,279). Hofling discloses in Figures 8 and 9 a delivery system comprising a cannula (212) having a distal end with a plurality of openings (28) having a curved passageway capable of directing a catheter (26) outwardly along a distinct trajectory; and a replenishment port (246).

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are



Art Unit: 3767

such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 84, 90, 91, 92, 93, 95, 96, 97, 98, 99, 100, 101, 102, 104, and 105 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hofling in view of Cosgrove, Jr. et al. (US 4,533,346). Hofling discloses the claimed invention except for reading a parameter and level of signal to control liquid infusion rate, adjusting rate, and exceeding a maximum setting value results in indicative output. Cosgrove discloses a interfaced control scheme used in the prior art that adjusts a setting of infusion rates based on, multiple analog signal levels based on the drug or physiological parameters (col. 3, line 55 - col. 5, line 62). It would have been obvious to one of ordinary skill in the art at the time of the invention to use the teachings of Cosgrove in the system of Hofling in order to achieve precise control of drug delivery to a patient. It would have been obvious to one of ordinary skill in the art at the time of the invention to use alarms and telemetry in the process control scheme in order to alert the user when maximum or dangerous levels are exceeded to provide a better level of control and to use telemetry to enable remote control settings to be established.

3. Claim 94 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hofling as modified by Cosgrove, Jr. et al in further view of Abbott et al (US Re. 36386). Hofling as modified by Cosgrove disclose the claimed invention except for resetting a timer when a parameter is changed. Abbott teaches resetting a timer when a parameter associated the flowrate is changed. (see para. (d) of claim 31). It would have been obvious to one of ordinary skill in the art at the time of the invention to use the teachings of Abbott in the system of Hofling in view of Cosgrove in order to obtain additional flow information concerning drug delivery parameters to more precisely control the drug delivery profile to the patient.

Art Unit: 3767

*Response to Arguments*

Applicant's arguments with respect to claims 80, 82-86, and 89-107 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine N. Witzak whose telephone number is (571) 272-7179. The examiner can normally be reached on Monday through Friday, 8-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Witzak 3/7/07*

KEVIN C. SIMONS  
SUPERVISORY PATENT EXAMINER

*Kevin C. Simons*